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**OFFICE OF THE ATTORNEY GENERAL & SAMOA LAW REFORM
COMMISSION**

THE 3 DRAFT BILLS BEFORE PARLIAMENT

1. Constitution Amendment Bill 2020
2. Land and Titles Bill 2020
3. Judicature Bill 2020

Objectives of the Draft Bills

- For Samoa to be reflected more in Samoa's Constitution.
- To re-establish the autonomy of the Land and Titles Court, the Court with specialist and exclusive jurisdiction to hear and determine matters particular to Samoans and the Samoan context, inclusive of 'tū ma aga' of Samoan families, villages, the Alii and Faipule governance and the communal context of Samoa.

Constitution Amendment Bill 2020

Amends the Constitution for the Land and Titles Court structure to be reflected inside the Constitution of Samoa (in Part IX), a specialist court with special jurisdiction particular to Samoa's context. The court with the jurisdiction to hear and determine customary land and customary titles matters, taking account of the 'tū ma aga' of Samoan families, villages, the Alii and Faipule governance and the communal context of Samoa. The revisions of Part VI (Judiciary) is to accommodate the amendments to Part IX.

Note: Currently, although the Preamble of the Constitution says Samoa is founded on God, and on 'tū ma aga' faa Samoa, the Constitution has very limited references to the Samoan context e.g. only some 8 out of 124 Articles of the Constitution make reference to matters Samoan and the Samoan context.

The incorporation of the Land and Titles Court into the Constitution continues its autonomy as it was traditionally, where decisions of the Land and Titles Court are final and cannot be reviewed by any other Court due to its specialist jurisdiction.

The judicial review of Land and Titles Court decisions that affect constitutional rights are currently heard before the Supreme Court. It is proposed that these judicial review matters be heard before the proposed Land and Titles Court of Appeal and Review (LTCAR). The pool from which judges can be drawn from includes a retired Samoan Supreme Court Judge; a current Samoan Supreme Court Judge; a retired Vice President of the Land and Titles Court; and a Samoan person eligible to be appointed a Supreme Court Judge.

The opportunity to enforce constitutional rights against a decision of the Land and Titles Court is therefore **NOT REMOVED** under these reforms, **but rather, shifted**, from the Supreme Court, to the proposed new tier in the LTC structure, the Land and Titles Court of Appeal and Review.

There is nothing in these reforms that affect the Fundamental Rights embedded in Part II of the Constitution of Samoa.

Land and Titles Bill (“LTC”) Bill 2020

This is a replica of the Land and Titles Bill 2019. It also repeats the bulk of Land and Titles Act 1981 provisions. This Bill supports and provides the details for the LTC structure proposed to be placed in the Constitution of Samoa. The new provisions outside of the 1981 Act provide the details for the proposed new 3rd tier, the Land and Titles Court Final Court of Appeal and Review (LTCAR). The LTCAR sits to hear judicial review (as explained above) and also sits to hear a second chance of appeal, offering a second chance to appeal land and titles decisions, as such decisions have generational effects, e aafia ai tupulaga o aso nei ma le lumanai.

Judicature Bill 2020

The Judicature Ordinance 1961 is an old law as evident from the year, 1961. It is 59 years old and many sections of this 1961 Ordinance is duplicated in the Constitution. This is an opportunity to remove duplications and update this Ordinance, and to revise this law to bring it into the current (modern) context of Samoa's laws. The Judicature Bill 2020 updates and replaces the Judicature Ordinance 1961.